DELAYED PURCHASE AND INSIGNIFICANT UTILISATION OF EQUIPMENT PROCURED UNDER FAST TRACK PROCEDURE

MINISTRY OF DEFENCE

PUBLIC ACCOUNTS

COMMITTEE

2007-2008

FIFTY-NINTH REPORT

FOURTEENTH LOK SABHA

LOK SABHA SECRETARIAT
NEW DELHI

P.A.C. No. 1855

Price: Rs. 23.00

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Published under Rule 382 of the Rules of Procedure and Conduct of Business Lok Sabha (Twelfth Edition) and Printed by the Manager, Govt. of India Press, Minto Road, New Delhi-110002.

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PUBLIC ACCOUNTS COMMITTEE (2007-2008)

(FOURTEENTH LOK SABHA)

DELAYED PURCHASE AND INSIGNIFICANT UTILISATION OF EQUIPMENT PROCURED UNDER FAST TRACK PROCEDURE

[Action Taken on 34th Report of Public Accounts Committee (14th Lok Sabha)]

MINISTRY OF DEFENCE

Presented to Lok Sabha on: 23 *November* 2007

Laid in Rajya Sabha on: 23 *November* 2007

LOK SABHA SECRETARIAT
NEW DELHI

November, 2007/*Kartika*, 1929 *(Saka)*

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INTRODUCTION

I, the Chairman, Public Accounts Committee, as authorised by the Committee, do present this Fifty-ninth Report on action taken by Government on the recommendations of the Public Accounts Committee contained in their 34th Report (14th Lok Sabha) on "Delayed purchase and insignificant utilisation of equipment procured under Fast Track Procedure".

2. This Report was considered and adopted by the Public Accounts Committee at their sitting held on 2nd November, 2007. Minutes of the sitting form Part II of the Report.

3. For facility of reference and convenience, the Observations and Recommendations of the Committee have been printed in thick type in the body of the Report.

4. The Committee place on record their appreciation of the assistance rendered to them in the matter by the Office of the Comptroller and Auditor General of India.

5. The Committee also place on record their appreciation for the invaluable assistance rendered to them by the officials of Lok Sabha Secretariat attached with the Committee.

NEW DELHI;
7 *November,* 2007
16 *Kartika,* 1929 *(Saka)*

PROF. VIJAY KUMAR MALHOTRA,
Chairman,
Public Accounts Committee.

CHAPTER I

REPORT

This Report of the Committee deals with the action taken by the Government on the Observations/Recommendations of the Public Accounts Committee in their Thirty-fourth Report (14th Lok Sabha) on Paragraph 2.2 of the Report of the C & AG of India for the year ended 31 March, 2004, No. 6 of 2005, Union Government (Defence Services—Army and Ordnance Factories) relating to **"Delayed purchase and insignificant utilization of equipment procured under Fast Track Procedure".**

2. The Thirty-fourth Report (14th Lok Sabha) which was presented to Lok Sabha on 12th December, 2006 contained 10 Observations/Recommendations. The Action Taken Notes in respect of all the Observations/Recommendations have been received from the Ministry of Defence and are broadly categorized as follows:—

(i) Observations/Recommendations which have been accepted by the Government:

Sl. Nos. 1, 2, 4, 6, 7, 9 and 10

(ii) Observations/Recommendations which the Committee do not desire to pursue in the light of replies received from the Government:

Sl. Nos. 3 and 5

(iii) Observations/Recommendations replies to which have not been accepted by the Committee and which require reiteration:

Sl. No. 8

(iv) Observations/Recommendations in respect of which Government have furnished interim replies:

—NIL—

3. In their 34th Report on the subject, the Committee had examined the issues involved in the evaluation, selection, procurement, delivery and utilisation of the de-mining equipment procured by the Defence Authorities through Fast Track Procedure for de-mining over 10 lakh mines laid along the borders during the Operation Parakram launched in December, 2001. The scrutiny of the subject by the Committee had revealed lapses in the procurement of de-mining equipment through Fast Track Procedure such as:

(i) Delay in Procurement, (ii) Benefit of competitive bidding lost by adopting the Fast Track Procedure, (iii) Delivery period of nine months in the contract though firm had

offered a schedule of four months to Technical Evaluation Committee, and (iv) Most mine fields already de-mined manually due to delay in procurement.

A. *Gist of Committee's Observations/Recommendations*

4. The Committee had made the following important Recommendations in their 34th Report on the subject:—

(i) The Ministry should evolve a system so that the requirement for defence equipment is assessed timely and expeditious action taken to procure the same under the normal procedure thereby dispensing with the need for a Fast Track Mechanism. Fast Track Procedure should be adopted only in emergent unavoidable conditions.

(ii) The Committee have urged that if at all a decision had to be taken to procure things urgently and that too under a Fast Track Mechanism, utmost urgency should be shown by the concerned authorities in planning and procurement.

(iii) The Ministry of Defence should take necessary precautions while framing the terms and conditions of procurement contract, and ensure that the faults/ shortcomings brought to light during field trials are immediately rectified by the vendor.

(iv) Observing the delay in actual delivery of de-mining equipment, the Committee have stated that given such an urgency, the cumulative delay in delivery of the equipment is inexplicable.

(v) While deploring the lackadaisical approach of the Ministry in enforcing the contract, the Committee have recommended that Ministry should invariably incorporate a Liquidated Damages (LD) clause in all future contracts in case of delayed delivery by the supplier and impose penalty on the vendor by reducing the cost of the contract.

(vi) The Committee have emphasized that the Ministry would now learn the right lessons from this experience and take adequate care to prevent recurrence of lapses witnessed in the instant case, while avoiding the pitfalls of procurement through fast track mechanism.

B. Action Taken by the Ministry of Defence

5. The Government have accepted most of the recommendations made by the Committee. The Action Taken Notes furnished by the Ministry on the various Observations/Recommendations of the Committee contained in the Report have been reproduced in the relevant Chapters of this Report.

6. In regard to recommendations (Sl. No. 3) regarding evolving a system to timely assess and expeditiously procure Defence equipment under the normal procedure itself the Ministry of Defence in their Action Taken Note have stated that the observation of the Committee is conceded and noted for future compliance for taking expeditious procurement action. However, on the question of accepting longer

delivery schedule for procurement of de-mining equipment, the Ministry of Defence in their Action Taken Note submitted:—

> "At the time of the PNC initially, the vendor handed over a chart giving delivery schedule for 24 Nos. in place of the schedule given in the offer for 40 Nos. After scrutiny, the PNC observed that the last consignment was proposed to be delivered within 41 weeks from the effective date of the contract. The vendor was then asked to clarify as this was at variance with what was proposed to the Technical Evaluation Committee at the time of evaluation and also from the delivery schedule given in the commercial offer. The vendor intimated that the schedule given in the offer was based on winter production capacity of the firm which will be more than summer production capacity. The Committee impressed upon the vendor to compress overall delivery time and the vendor was asked to present the revised delivery schedule as the earlier proposed schedule was not acceptable to the Committee. The vendor explained that assembly was in progress for five vehicles and these could be delivered in two lots within four and ten weeks respectively, of opening of LC. Production of the balance lot could only be commenced on receipt of signed contract and advance payment and delivery of the third consignment could be affected only after 27 weeks from the effective date of the contract. The vendor intimated that delivery of the last four consignments would be compressed by three weeks. This was not accepted by the Committee and the vendor was asked to review the delivery schedule and compress it further. The vendor informed the Committee that the schedule could not be further compressed without compromising quality as large number of checks on various components and their integration were required to be carried out in the factory premises. Thereafter, after deliberations and duly considering the requirement of ensuring quality, the delivery schedule for supply of 24 Nos. of 910 MCV Series 2 alongwith spare parts package within 39 weeks, from the effective date of the contract was agreed to.
>
> As regards the observation of the Committee that the equipment could perhaps have been procured under normal procurement procedure, it is submitted that that would have taken much more time for trials, evaluations etc. with consequent cost implication like payment of higher compensation to farmers for crop-loss etc."

7. Regarding non-incorporation of LD clause in the contract in case of delay in completing the supply by the vendor (Recommendation Sl. No. 8), the Ministry in their Action Taken Note have conceded that there was some delay in the opening of LC by the Bank and also in the matter of Pre-Despatch Inspection (PDI). There were also some problems in shipping arrangements. Because of these factors, any imposition of Liquidated Damages (LD) on the vendor would not stand legal scrutiny and therefore, no LD was recovered from the vendor. The Ministry have stated that corrective action is being taken so that there would be no delay in making logistic arrangements in future contracts.

8. Apprising the Committee about the extent of utilization of equipment for de-mining required in connection with Operation Parakram and subsequently the Ministry in their Action Taken Note stated as follows:—

> "The equipment was utilized for probing 182 mine fields covering an area of approximately 18,433.94 acres. The equipment has been utilized extensively and has performed its task post OP Parakram satisfactory. The equipment will continue to be utilized in future for its entire service life, including possible deployment in UN missions and hence will not result in 'under-utilisation'. Reports from field units on the performance of the equipment were positive and they confirmed that the equipment had performed its task effectively in the conditions obaining in the sectors of employment."

C. Observations/Recommendations

9. **The Committee note that in respect of their earlier recommendation regarding evolving a system for timely assessment and expeditious procurement of Defence equipment, the Ministry while conceding the point have stated that they have noted the same for future compliance for ensuring timely perspective planning and taking expeditious procurement action. However, the Committee are not satisfied with the fact that they have not been apprised about any concrete system put in place by the Ministry of Defence to effectively deal with cases under the Fast Track Procedure (FTP). As an efficient FTP can play a vital role in emergent situations, the Committee hope that the Ministry would at least now initiate specific measures for a more transparent, simple and faster procedure of procurement of Defence equipment. The Commitee further desire that the procurement procedures should be constantly reviewed and re-formulated by carefully analysing its shortcomings and an effective procedure established for emergent purchases which is truly 'fast track and quick'. The Committee would like to be apprised of the specific measures taken/proposed to be taken in this regard.**

10. In so far as the non-invoking of Liquidated Damage (LD) clause and imposing of penalty on the vendor for the delay in delivery of the equipment is concerned, the Ministry in their Action Taken Note have accepted that there was some delay in the opening of Letter of Credit (LC) by the Bank and also in the matter of Pre-Despatch Inspection (PDI). There were also some problems in the shipping arrangements. Because of these factors the Ministry have contended that any imposition of LD on the vender would not have stood legal scrutiny and therefore, no Liquidated Damages was recovered from the vendor. From the reply of he Ministry of Defence it is evident that there is no proper system in place for monitoring prompt delivery of Defence equipment. The Committee are constrained to point out that although the purchase of de-mining equipment was proposed and effected through FTP keeping in view the urgency of operational requiements, there was substantial delay in the delivery of the equipment due to lack of effective coordination between the Ministry of Defence and other concerned agencies defeating the very concept and intent of Fast Track Procedure. While reiterating their concern on this count, the Committee desire that an effective coordination and monitoring mechanism be evolved by the Ministry of Defence involving all the agencies so that procurement process progresses smoothly without hindrance and defence equipment are made available within the time-frame required by the Armed Forces.

CHAPTER II

OBSERVATIONS/RECOMMENDATIONS THAT HAVE BEEN ACCEPTED BY GOVERNMENT

ACTION TAKEN REPORT (ATR) ON THE 34TH REPORT OF THE PAC ON ''DELAYED PURCHASE AND INSIGNIFICANT UTILISATION OF EQUIPMENT PROCURED UNDER FAST TRACK PROCEDURE"

Recommendation

During the Operation Parakram launched in December 16, 2001, the Indian Army was mobilized along the borders. During this operation several mines were laid extensively in the frontage area. Most of the minefields were laid on agricultural land, which was required to be returned to the owners, after the termination of the operation, in a useable condition after clearing the mines".

[S. No. 1 of Appendix II Para 52 of 34th Report of the PAC (14th Lok Sabha)]

Action Taken by the Ministry of Defence

The observations are factual and no further comments are required.

Sd/-
Signature of Joint Secretary &
Acquisition Manager (LS)

[M/o Defence, D/o Defence O.M. No. 21/49/2006-D(GS IV) dated 30th July, 2007]

Recommendation

Mine clearance process, after the operation, involved two stages-initially by manual recovery and thereafter by mechanical means. Explaning the procedure of demining the Ministry have indicated that during the process of manual recovery of minefields, it is not possible to trace all the mines which could have drifted or got further buried due to vagaries of nature, *i.e*. flooding of area, shifting of soil/sand wind etc. or dislocation due to animal/human interference. Hence there is need for mechanical method which ensured that certain mines, which were not found in the process of manual recovery, are taken out.

[S. No. 2 of Appendix II Para 53 of 34th Report of the PAC (14th Lok Sabha)]

Action Taken

The observations are factual and no comments are offered.

Sd/-
Signature of Joint Secretary &
Acquisition Manager (LS)

[M/o Defence, D/o Defence O.M. No. 21/49/2006-D(GS IV) dated 30th July, 2007]

Recommendation

The Committee note that based on technical literature and delivery schedule offered by various firms, three firms supplying the required demining equipment were short listed for evaluation by the Technical Evaluation Committee (TEC), out of which, one firm was found to be technically superior and most suitable for employment in the Indian operational scenario. According to the Ministry, demining equipment of the selected firm was recommended after due evaluation of the technical parameters against operational requiement and based on the performance of the equipment during the demonstration organised for the Technical Evaluation Committee.

[S. No. 4 of Appendix II Para 55 of 34th Report of the PAC (14th Lok Sabha)]

Action Taken by the Ministry of Defence

The observations are factual and no comments are offered.

Sd/-
Signature of Joint Secretary &
Acquisition Manager (LS)

[M/o Defence, D/o Defence O.M. No. 21/49/2006-D(GS IV) dated 30th July, 2007]

Recommendation

The Committee find that the Technical Evaluation Committee (TEC) evaluated the equipment based on only live dynamic demonstrations against the Operational Requirement at the vendor's premises. No trial evaluation is stated to have been as such carried out on the equipment in India. However, Blast Tests were carried out as part of the Joint Receipt Inspection (JRI) of the first consignment on the first de-mining vehicles during 27-28 June 2003. During these Blast Tests, it was noticed that 5 out of 10 mines did not detonate, the vehicle got bogged down in slushy area and was recovered using the dozer, the vehicle did not have any sensor to indicate the blast of anti-personnel mines and the speed of the vehicle was also very slow. The Ministry have tried to explain in their written submission that the observations made by the trial team were not directly related to the operational performance of the equipment and at no stage the equipment was found unsuitable or rejected. However,

the Ministry have not specifically indicated whether the shortcomings pointed out during the Blast Tests were even taken up with the firm and whether and when the firm had set right these shortcomings. The Committee would, therefore, like to be apprised in this regard and would also like to know as to how the equipment worked satisfactorily subsequently. They desire that, in future, the Ministry of Defence should take necessary precautions while framing the terms and conditions of procurement contract, and ensure that the faults/shortcomings brought to light during field trials are immediately rectified by the vendor.

[S.No. 6 of Appendix II Para 57 of 34th Report of the PAC (14th Lok Sabha)]

Action Taken by the Ministry of Defence

The shortcomings brought out by trial team during JRI were minor in nature and insignificant *vis-a-vis* the performance of the equipment. Moreover, as per laid down procedure and provision of the contract, quality and quantity claims raised against the vendor have already been settled. The equipment has performed its designated function satisfactorily in demining operations post OP Parakram.

Sd/-
Signature of Joint Secretary &
Acquisition Manager (LS)

[M/o Defence, D/o Defence O.M. No. 21/49/2006-D(GS IV) dated 30th July, 2007]

Recommendation

Surprisingly, the contract executed with the supplier for procurement of demining equipment did not contain any provision for life span of the equipment, although all demining equipment are stated to have a specified shelf life. It has been noticed that the equipment supplied by the selected firm was assessed by Controller of Quality Assurance (EE) [CQA(EE)] in the Ministry of Defence to have a service life of 7 years and storage life of 10 years. The Ministry have accepted that they work on a principle of initial life and extend the life by mid-overhauls and generally work on a principle of 25 to 30 years of serviceable life of equipment. The Committee are constrained to point out that since the stipulated shelf life of the equipment was not explicitly mentioned in the contract, the Ministry's contention of the serviceable life of this particular equipment being 25 to 30 years does not carry much weight. The Committee desire that while executing such contracts in future, important provision of life-span of equipment should invariably by considered carefully before entering into contract with the supplier.

[S.No. 7 of Appendix II Para 58 of 34th Report of the PAC (14th Lok Sabha)]

Action Taken by the Ministry of Defence

The shelf life of the equipment was not stipulated explicitly in the contract, however, Controller of Quality Assurance (EE) assessed the equipment to have a service life of 7 years and storage life of 10 years which can be extended by means of mid-overhauls and generally works on the principle of 25-30 years of serviceable life of the equipment. However, this requirement has been noted for future and this aspect of stipulating shelf life/in-service life of the equipment has been addressed in the DPP 2005 and DPP 2006, where it is mandatory *vide* Para 10 of the standardised RFP to stipulate the in-service life and shelf life of the equipment by the vendor in the offer.

Sd/-
Signature of Joint Secretary &
Acquisition Manager (LS)

[M/o Defence, D/o Defence O.M. No. 21/49/2006-D(GS IV) dated 30th July, 2007]

Recommendation

Out of 2,78,300 mines proposed to be recovered, only 1182 miens (0.42 per cent) were recovered using the demining equipment and the remaining were recovered manually. It is, thus, evident that the equipment purchased due to operational urgency was hardly utilised as most of the minefields had already been demined manually. The Ministry of Defence have tried to explain the poor utilisation of the equipment purchased by stating that if all the minefields had been demined by using this equipment, it would not only have caused serious deficiencies in the holding of mines, but also the entire demining equipment would have been damaged beyond economic repair/usage, as any equipment cannot be subjected to indefinite number of blasts or employed in a role for which it is not designed for. Further, according to them, demining operations are done in terms of area covered and number of mine-fields and not number of mines blasted. The Committee find this explanation of the Ministry untenable. If their argument were to be accepted, then it is difficult to comprehend as to why there was a need for import of such a costly equipment in large number and that too urgently under Fast Track Procedure. Either these facts now being explained were not visualised earlier, or, there is something inherently wrong in the system of conception, planning and procurement of urgently required defence equipment. Although, the Ministry have contended that the demining equipment has been utilised extensively, the Committee would like to be apprised about the extent of utilisation thereof for the demining required in connection with Operation Parakram and subsequently.

[S.No. 9 of Appendix II Para 60 of 34th Report of the PAC (14th Lok Sabha)]

Action Taken by the Ministry of Defence

The equipment was utilised for probing 182 minefields covering an area of approximately 18,433.94 acres. The equipment has been utilised extensively and has

performed its task post OP Parakram satisfactorily. The equipment will continue to be utilised in future for its entire service life, including possible deployment in UN missions and hence will not result in 'under-utilisation'. Reports from field units on the performance of the equipment were positive and they confirmed that the equipment had performed its task effectively in the conditions obtaining in the sectors of employment.

Sd/-
Signature of Joint Secretary &
Acquisition Manager (LS)

[M/o Defence, D/o Defence O.M. No. 21/49/2006-D(GS IV) dated 30th July, 2007]

Recommendation

The facts narrated above abundantly confirm that the process of acquisition of demining equipment by the Government leaves much to be desired. The equipment procured under Fast Track Procedure obviously involved a higher cost than that procured under the normal procedure. Further, whatever justification existed for adopting the Fast Track Procedure appeared to be defeated when the Ministry took such a long time in the negotiations for bringing the equipment to the country. The placement of order on the foreign supplier was unduly delayed, the supplier's delivery schedule of four months intimated to the Technical Evaluation Committee was enhanced to nine months and even after the enhancement of the delivery schedule, 50 per cent of the ordered quantity *i.e.* 12 equipment were supplied after the expiry of the delivery period of nine months. The delay in procurement thus rendered the very purpose of procurement infructuous, as the defective and old vintage mines had to be cleared manually. By adopting the Fast Track Procedure, the benefit of competitive rates through open tenders was lost, while the very purpose of the Fast Track Mechanism was defeated due to delayed procurement. The Committee trust that the Ministry would now learn the right lessons from this experience and take adequate care to prevent recurrence of lapses witnessed in the instant case, while avoiding the pitfalls of procurement through fast-track mechanism.

[S.No. 10 of Appendix II Para 61 of 34th Report of the PAC (14th Lok Sabha)]

Action Taken by the Ministry of Defence

Paragraph contains summary of observations of the PAC. Hence, no comments are offered separately.

Sd/-
Signature of Joint Secretary &
Acquisition Manager (LS)

[M/o Defence, D/o Defence O.M. No. 21/49/2006-D(GS IV) dated 30th July, 2007]

CHAPTER III

OBSERVATIONS/RECOMMENDATIONS WHICH THE COMMITTEE DO NOT DESIRE TO PURSUE IN VIEW OF THE REPLIES RECEIVED FROM GOVERNMENT

Recommendation

The Committee note that for de-mining of over 10 lakh mines laid during Operation Parakram, the Army Headquarters proposed in August 2002 for procurement of 40 de-mining equipment under 'Fast Track Procedure' through an Empowered Committee. In order to minimize the risk of casualties involved in manual de-mining and render the mined land 100% safe for cultivation, the Defence Procurement Board approved the proposal for procurement of de-mining equipment on a 'Fast Track' in October 2002. It is pertinent to note in this regard that while Operation Parakram was thought of in 2001, the Army sent the proposal for procurement of de-mining equipment only in 2002. Needless to say that the Army authorities woke up late in the matter for procurement of 'Fast Track Equipment' for de-mining purposes. The representative of the Ministry of Defence also conceded during evidence that earlier procurement of de-mining equipment could have been thought of.

It is incomprehensible as to why the Ministry adopted the Fast Track Procedure instead of the normal procedure when they did not take timely action earlier to procure the same. The instructions issued in 2001 regarding Fast Track Procedure provide that such a procedure is to be adopted only in an operational situation foreseen as imminent or for a situation where a crisis has emerged without prior warning. In the present case, the situation was not only unforeseen but there was ample time available with the Army authorities to conceive, plan and procure the requisite under the normal procedure itself. The Committee, therefore, feel that the necessity of a Fast Track Procedure in this particular case had arisen only because of the inaction on the part of concerned authorities earlier. The Committee feel that adoption of Fast Track Procedure instead of normal procedure for procurement of de-mining equipment is clearly indicative of lack of perspective planning on the part of the concerned authorities. The Committee emphasize that the Ministry should evolve a system so that the requirement for any defence equipment is assessed timely and expeditious action taken to procure the same under the normal procedure thereby dispensing with the need for a Fast Track Mechanism. Fast Track Procedure should be adopted only in emergent unavoidable conditions.

[S. No. 3 of Appendix II Para 54 of 34th Report of the PAC (14 th Lok Sabha)]

Action Taken by the Ministry of Defence

The de-mining-operation is a post-war activity which has numerous variables affecting its location, time and methodology. It is a complex combination of recovery, breaching, proving and reproving using various standard as well as innovative methods as per conditions obtaining in each minefield, with safety of troops, local populace and live stock as a paramount requirement. The delay of seven months in sending proposal for procurement of de-mining equipment in August 2002 after commencement of Operation Parakram, was mainly due to prevailing fluid defensive cum offensive operational situations and focus on dynamic ongoing activities. Once the de-escalation of hostilities was planned, the methodology for de-mining of mined areas was formalised. However, the observation is conceded and noted for future compliance for timely perspective planning and taking expeditious procurement actions.

Sd/-
Signature of Joint Secretary &
Acquisition Manager (LS)

[M/o Defence, D/o Defence O.M. No. 21/49/2006-D(GS IV) dated 30th July, 2007]

Recommendation

The Committee find it strange that although the selected firm had offered a delivery schedule of four months to the Technical Evaluation Committee (TEC) for the supply of 32 equipment during technical evaluation, it was allowed a delivery period of nine months for a lesser number of equipment in the contract. According to the Ministry being, unaware of the procurement procedures of Ministry of Defence, the vendor initially verbally intimated a delivery schedule of four months assuming that the orders would be placed on them immediately by the Technical Evaluation Committee itself and also due to higher production capacity of the firm during winter as compared to summer.The vendors subsequently proposed a revised delivery schedule of 39 weeks for supply of 24 pieces of the equipment, when the supply order was finally placed on him. Even though the equipment were sought to be procured under Fast Track Procedure, the Government did not specify a shorter delivery schedule but only asked the vendor that the goods must be delivered at the earliest. The Committee are inclined to conclude that the decision of the Government to accept delivery period of nine months against the original period of four months was not proper, which resulted in avoidable delay in receipt and actual utilisation of the equipment. This reinforces the Committee's belief that perhaps the equipment could very well have been procured under normal procedure itself and there was hardly any need for a Fast Track Procedure. If at all a decision had to be taken to procure things urgently and that too under a Fast Track Mechanism, utmost urgency should have been shown by the concerned authorities in planning and procurment.

[S.No. 5of Appendix II Para 56 of 34th Report of the PAC (14th Lok Sabha)]

Action Taken by the Ministry of Defence

At the time of the PNC initially, the vendor handed over a chart giving delivery schedule for 24 Nos. in place of the schedule given in the offer for 40 Nos. After scrutiny, the PNC observed that the last consignment was proposed to be delivered within 41 weeks from the effective date of the contract. The vendor was then asked to clarify as this was at variance with what was proposed to the Technical Evaluation Committee at the time of evaluation and also from the delivery schedule given in the commercial offer. The vendor intimated that the schedule given in the offer was based on winter production capacity of the firm which will be more than summer production capacity. The Committee impressed upon the vendor to compress overall delivery time and the vendor was asked to present the revised delivery schedule as the earlier proposed schedule as not acceptable to the Committee. The vendor explained that assembly was in progress for five vehicles and these could be delivered in two lots within four and ten weeks respectively, of opening of LC. Production of the balance lot could only be commenced on receipt of signed contract and advance payment and delivery of the third consignment could be affected only after 27 weeks from the effective date of the contract. The vendor intimated that delivery of the last four consignments would be compressed by three weeks. This was not accepted by the Committee and the vendor was asked to review the delivery schedule and compress it further. The vendor informed the Committee that the schedule could not be further compressed without compromising quality as large number of checks on various components and their integration were required to be carried out in the factory premises. Thereafter, after deliberations and duly considering the requirement of ensuring quality, the delivery schedule for supply of 24 Nos. of 910 MCV Series 2 alongwith spare parts package within 39 weeks, from the effective date of the contract was agreed to.

As regards the observation of the Committee that the equipment could perhaps have been procured under normal procurement procedure, it is submitted that that would have taken much more time for trials, evaluations etc. with consequent cost implication like payment of higher compensation to farmers for crop-loss etc.

Sd/-
Signature of Joint Secretary &
Acquisition Manager (LS)

[M/o Defence, D/o Defence O.M. No. 21/49/2006-D (GS IV) dated 30th July, 2007]

CHAPTER IV

OBSERVATIONS/RECOMMENDATIONS REPLIES TO WHICH HAVE NOT BEEN ACCEPTED BY THE COMMITTEE AND WHICH REQUIRE REITERATION

Recommendation

The Committee note that the contract was concluded with the firm in March 2003, five months after the stipulated supply date, for the supply of 24 de-mining equipment. The equipment was received between June 2003 and March 2004, 8 to 16 months beyond the date indicated by Army Hqrs. Even after extension of the delivery schedule, 50 per cent of the ordered equipment, *i.e.* 12 equipment were supplied only after the expiry of the delivery period of 9 months. It may not be out of place to mention here that the equipment was required rather urgently for de-mining mine-fields as a consequence of Army operation in 2001. Given such an urgency, the cumulative delay in delivery of the equipment is inexplicable.

The Committee further observe that though there was substantial delay in completing the supply, Liquidated Damages (LD) clause was not invoked and Penalty was not imposed on the vendor for the delay. The Ministry have contended that there was no requirement to invoke LD clause as the delivery was completed with the agreed delivery schedule. The Committee, however, believe that the Ministry's contention was based on the premise that the effective date for delivery schedule was from the date of opening of letter of credit. The delivery schedule should have commenced from the date on which the advance payment was made. Thus, there was a delay in completing the supply for which the LD clause should necessarily have been invoked on the vendor. While deploring the lackadaisical approach of the Ministry in enforcing the contract, the Committee recommend that the Ministry should invariably incorporate a LD clause in all future contracts in case of delayed delivery by the supplier and impose penalty on the vendor by reducing the cost of the contract.

[S.No. 8 of Appendix II Para 59 of 34th Report of the PAC (14th Lok Sabha)]

Action Taken by the Ministry of Defence

The matter has been considered carefully. As per Article 3 of the contract, the Effective Date was the (i) Date of Receipt of Performance Bank Guarantee (PBG), (ii) Receipt of advance payment in the sellers account and (iii) Provision of End User Certificate (EUC) by the buyer to the seller, whichever is later. Accordingly, the Effective Date of the contract was 31st March, 2003, the date of release of the advance payment. Again, as per Article 4.6, any delay in the issuance of the LC or in payments by the buyer would correspondingly extend the delivery period. There was some delay in the opening of LC by the Bank and also in the matter of Pre Despatch Inspection (PDI). There were also some problems in shipping arrangements. Because

of these factors, any imposition of Liquidated Damages (LD) on the vendor will not stand legal scrutiny and therefore, no LD is being recovered from the vendor. However, corrective action is being taken so that there would be no delay in making logistic arrangements in future contracts.

Sd/-
Signature of Joint Secretary &
Acquisition Manager (LS)

[M/o Defence, D/o Defence O.M. No. 21/49/2006-D (GS IV) dated 30th July, 2007]

CHAPTER V

OBSERVATIONS/RECOMMENDATIONS IN RESPECT OF WHICH GOVERNMENT HAVE FURNISHED INTERIM REPLIES/NO REPLIES

—NIL—

NEW DELHI;
7 *November*, 2007
16 *Kartika*, 1929 (*Saka*)

PROF. VIJAY KUMAR MALHOTRA,
Chairman,
Public Accounts Committee.

PART II

MINUTES OF THE TWELFTH SITTING OF PUBLIC ACCOUNTS COMMITTEE (2007-2008) HELD ON 2ND NOVEMBER, 2007

The Committee sat from 1100 hrs. to 1250 hrs. in Committee Room 'C', Parliament House Annexe, New Delhi.

PRESENT

Prof. Vijay Kumar Malhotra — *Chairman*

Lok Sabha

2. Shri Khagen Das
3. Shri Raghunath Jha
4. Shri Bhartruhari Mahtab
5. Shri Brajesh Pathak
6. Shri K.S. Rao
7. Shri Tarit Baran Topdar

Rajya Sabha

8. Shri Prasanta Chatterjee
9. Dr. K. Malaisamy

SECRETARAIT

1. Shri A. Mukhopadhyay — *Joint Secretary*
2. Shri Brahm Dutt — *Director*
3. Shri M.K. Madhusudhan — *Deputy Secretary-II*
4. Shri R.K. Suryanarayanan — *Under Secretary*
5. Shri N.K. Jha — *Under Secretary*

Representatives of the Office of the Comptroller and Auditor General of India

1. Shri B.K. Chattopadhyay — ADAI (RC)
2. Shri A.N. Chatterji — DG (PA)
3. Shri K.R. Sriram — PD (ESM)
4. Shri Jayanti Prasad — PD (INDT)
5. Shri R.B. Sinha — PD (AF&N)

Representatives of the Ministry of Consumer Affairs, Food and Public Distribution (Deptt. of Food & Public Distribution)

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Representative of the Food Corporation of India (FCI)

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Representative of the Planning Commission

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Representative of the Ministry of Rural Development (Department of Rural Development)

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Representative of Ministry of Housing and Poverty Alleviation

*** *** *** *** ***

2. At the outset, the Chairman, PAC welcomed the Members to the sitting of the Committee. Thereafter, the Committee took up for consideration, the following Draft Reports:

(a) Draft Report on Para 11.3 of C&AG Report No. 7 of 2006 [Indirect Taxes—Customs, Central Excise & Service Tax] relating to "Under-valuation due to adoption of lower mutually agreed price."

(b) Draft Action Taken Report on 28th Report of PAC (14th Lok Sabha) on "Control Systems in India Security Press, Nashik."

(c) Draft Action Taken Report on 34th Report of PAC (14th Lok Sabha) on "Delayed purchase and insignificant utilization of equipment procured under Fast Track Procedure."

After brief discussion, the Committee adopted the draft Reports without any modifications/amendments and authorized the Chairman to finalise and present the same to the Parliament in the light of factual verification done by the Audit.

3. *** *** *** *** ***

4. *** *** *** *** ***

5. *** *** *** *** ***

6. *** *** *** *** ***

The Committee then adjourned.